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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michael Woehrle

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12/02/2008

THE NATH LAW GROUP

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EXAMINER

MCDUFFIE, MICHAEL D

ART UNIT

PAPER NUMBER

3632

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



This correspondence is in response to applicant's reply filed on 09/10/2008. Claims 1-8 and 10-11 are pending.

## **DETAILED ACTION**

### ***Drawings***

The drawings were received on 7/23/2008. These drawings are acceptable.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taubmann et al. (EP 1068093 B1).

Regarding claim 1, Taubmann discloses a drive having a spindle **5** which is attached to a first rail **4** of two rails **3, 4** that are adjustable relative to one another by means of at least one support (as shown in Fig. 1 below) that is located on the end of the spindle **5**, and with a gear mechanism **9** which is driven by a motor **2** and which is

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arranged on the second rail **3**. Taubmann fails to teach where the at least one support device has a trough-shaped outer support surface in which one end of the spindle is seated in a fixed manner. The Examiner notes that the spindle's attachment to the support device is merely an alternative method of fastening the elements together. Taubmann further teaches a block-like limb **6b** attached to the support device.

The Examiner further notes that the trough-shaped, outer bearing surface of the present invention, is merely a gusset, for providing additional support. It is well known in the art to provide gussets, to add stability to elements as seen in: US 5267717 to Isomura, element **124**; US 5516071 to Miyauchi, element **13**, and US 5259257 to Mouri, element **13**. The claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

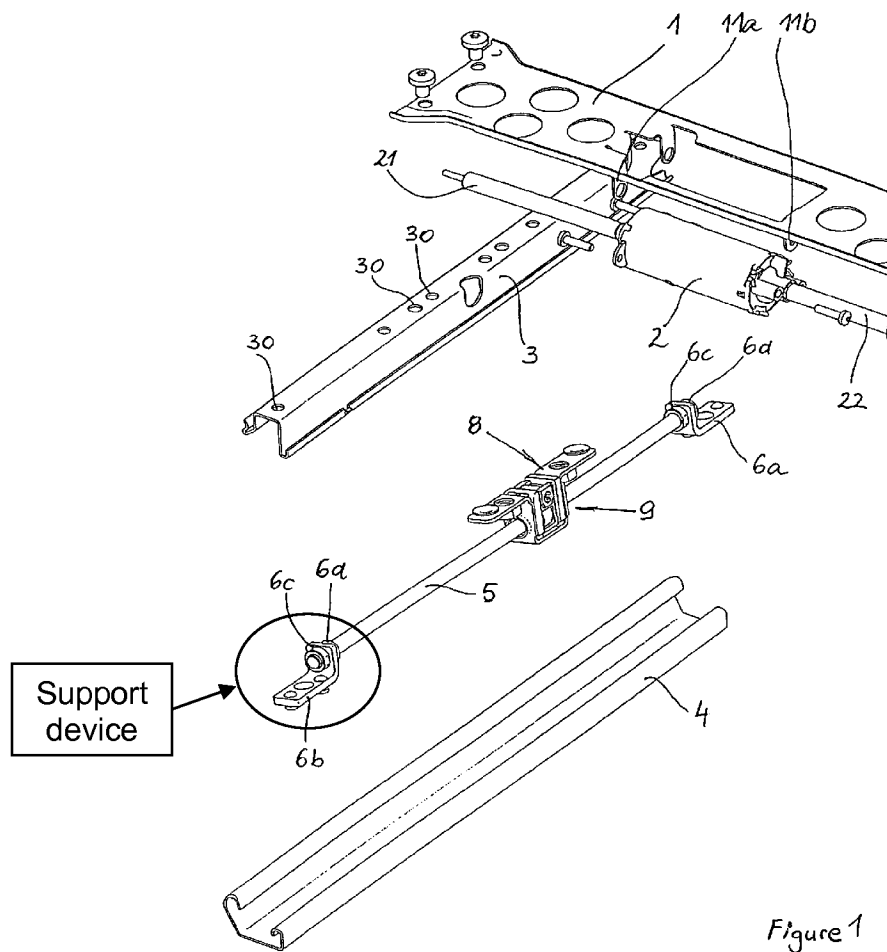
With regards to claim 2, Taubmann teaches the drive, characterized in that two such supports (see Fig. 1 below) are provided, of which in each case one support device serves to support one of two ends of the spindle **5**.

Regarding claims 3, 4, and 10, the spindle being attached onto the trough-shaped bearing surface by means of laser welding, is a product by process. The Examiner notes that the utilization of welding is a mechanical equivalent of using a screw or other fastener to attach two elements. It would have been obvious to one having ordinary skill in the art at the time of the invention, to weld the spindle to the support surface, as a substitute for using screws, bolts, or other fasteners, in order to provide a secure connection between the spindle and support surface.

With regards to claims 5, 7, 8, Taubmann fails to disclose the specific dimensions of the components of his device. It would have been obvious to one having ordinary skill in the art at the time of the invention to alter the measurements of the components, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claim 6, Taubmann fails to teach the desired materials as claimed by the Applicant. It would have been obvious to one having ordinary skill in the art at the time of the invention, to utilize steel or other metals, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 11, Taubmann goes on to disclose the drive, characterized in that the horizontal limb **6b** having attachment hole (as shown in Fig. 14) so that it can be attached to the vehicle floor.



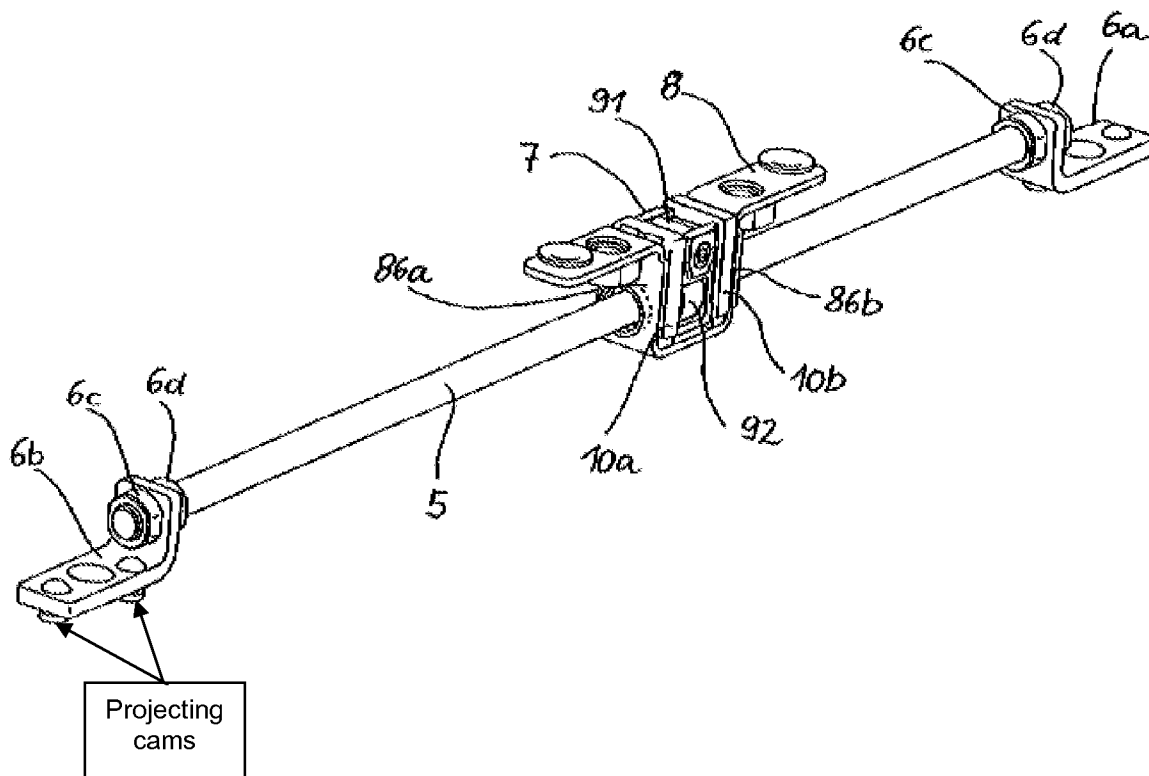


Figure 2

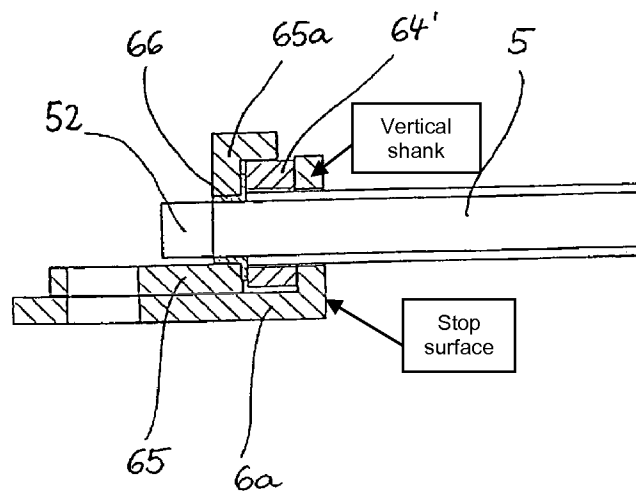


Figure 15

***Response to Arguments***

Applicant's arguments with respect to claim 1 has been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL MCDUFFIE whose telephone number is (571)272-3832. The examiner can normally be reached on Mon.-Fri., 7AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Shriver can be reached on 571-272-6698. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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/Michael McDuffie/  
Examiner, Art Unit 3632  
22-Nov-08

/J. ALLEN SHRIVER II/  
Supervisory Patent Examiner, Art Unit 3632